*** THE HONOURABLE SRI JUSTICE V. ESWARAIAH**

+ WRIT PETITION No.20995 OF 2007

% Dated:22.10.2007

Dr.T.S.A.Guptha, S/o.T.Rama Mohana Rao.

…PETITIONER

Versus

The Joint Collector, II, Ranga Reddy District,
Lakdi-ka-pool, Hyderabad,
and others.

…RESPONDENTS

! Counsel for the petitioner : Sri A.Ravinder Reddy

^ Counsel for the respondents: Government Pleader for Revenue
Sri S.M.Subhani.

< Gist:

> Head Note:

? Cases referred:

AIR 1998 SC 972

THE HONOURABLE SRI JUSTICE V. ESWARAIAH

WRIT PETITION No.20995 OF 2007

DATED:22-10-2007

BETWEEN

Dr. T.S.A. Guptha,
S/o. T. Rama Mohana Rao,
Occ: Doctor,
R/o. Amar Nagar, Peddapalli,
Karimnagar District.

...PETITIONER

AND

The Joint Collector II,
Ranga Reddy District,
Lakdi-Ka-Pool,
Hyderabad and two others.

...RESPONDENTS

ORDER:

Petitioner seeks a Writ of Mandamus to declare the action of the Revenue Divisional Officer/Special Grade Deputy Collector, East Division, Ranga Reddy District, in initiating proceedings for grant of occupancy right certificate in respect of lands in Sy.Nos.255, 258, 275/A, 292, 293, 299, 300, 301, 305 and 306 of Mamidipally Village, Saroornagar Mandal, Ranga Reddy District in favour of the Andhra Pradesh Wakf Board (for short 'Wakf Board') as illegal and arbitrary and to direct the Revenue Divisional Officer not to grant occupancy rights in favour of the Wakf Board or any other institution.

2. It is the case of the petitioner that he purchased land in an extent of Ac.2.00 cents in Sy.Nos.299 & 300 of Mamidipally Village, Saroornagar Mandal, vide registered sale deed dated 04.02.2006 from Smt. Sayeeda Zamrudh Begum W/o. Md. Fayyaz and others.

The vendors of the petitioner have been granted occupancy right certificates and mutation was also effected duly recording their names. While so, against the grant of occupancy right certificates certain persons filed appeals under Section 24 of the Andhra Pradesh (Telangana Area) Abolition of Inams Act, 1955 (for short 'the Act') before the Joint Collector, Ranga Reddy District. The first respondent held that as per the provisions of the Act the persons in occupation as on 01.11.1973 are entitled for occupancy rights certificate but on verification of the records a suo motu enquiry has been taken up under Section 24 of the Act and it was found that as per the notification published in supplement to Part II of the Andhra Pradesh Gazette No.6-A dated 09.02.1989 the properties was shown as wakf property at Sl.Nos.2910 and 2913 pertaining to the lands in the aforesaid survey numbers situated at Mamidipally Village, Saroornagar Mandal.

3. As per the amended Section 4(1) of the Act vide amendment Act 1994 the Inams held by or for the benefit of charitable and religious institutions no person shall be entitled to be registered as an occupant and the institution alone shall be entitled to be registered as an occupant. As per proviso to Section 4(1) of the Act any occupancy right certificate granted under the Act shall be deemed always to have been null and void and no effect shall be given to such registration. Accordingly, it is stated that the said lands are notified as wakf lands and the individuals are not entitled for occupancy rights in respect of the said lands but the religious institution alone is entitled for occupancy rights. Accordingly various occupancy right certificates issued by the Revenue Divisional Officer have been set aside by the Joint Collector by order dated 25.02.2006 vacating the stay orders granted earlier in case No.F1/337/2005 and batch dated 31.03.2005.

4. The petitioner has not questioned the said order but pursuant to the said order it appears that the Wakf Board made an application seeking to issue

occupancy right certificate under Section 4 read with 10 of the Act in respect of the said lands notified as wakf lands before the Revenue Divisional Officer and the RDO issued a notice in Lr.No.J/557/2007 dated 04.05.2007 in Form – II as to why the occupancy rights certificate shall not be given in favour of the Chief Executive Officer, Andhra Pradesh Wakf Board.

5. Pursuant to the said notice dated 04.05.2007 some of the persons who have already got occupancy rights certificate filed W.P.No.17475 of 2007 and this Court dismissed the writ petition stating that it is open to the petitioners therein to file an appropriate application to get impleaded before the second respondent and if any such application is filed they may be heard before issuing occupancy rights certificate in favour of the third respondent – Wakf Board. Petitioner herein wants this Court to make similar observations in this writ petition also. The petitioner has not questioned the order of the Joint Collector setting aside the grant of occupancy rights certificate but only has the limited grievance to the extent that he is entitled to get himself impleaded in the proceedings initiated by the Revenue Divisional Officer vide Lr.No.J/577/2007 dated 04.05.2007. The said Form – II notice itself has been issued by way of a general notification calling upon objections, therefore, it is open to the petitioners to file implead petition and object for grant of occupancy rights certificate in favour of Wakf Board.

6. Once the lands have been notified as wakf property under Section 5(2) of the Wakf Act, 1995, the aggrieved persons are entitled to raise a dispute under Section 6(1) of the Wakf Act by instituting a suit before the Wakf Tribunal and unless the notification is modified under Section 6(4) of the Wakf Act, the said notification shall be deemed to have become final and conclusive. The Wakf Tribunal alone is entitled to decide with regard to the legality and validity of the said notification and as to whether the property belongs to wakf or not but no suit or other legal proceedings are maintainable

to decide the said dispute.

7. As per the judgment of the Supreme Court in **SAYYED ALI v. ANDHRA PRADESH WAKF BOARD**[1] it is open for any person to raise a dispute within one year from the date of publication of the list of Wakf under sub-section (2) of Section 5 of the Act. Under Section 6(4) of the Act the list of wakfs published under sub-section (2) of Section 5, unless it is modified pursuant to the decision of the Tribunal shall be final and conclusive. Any occupancy rights under the Inams Abolition Act in respect of the wakf properties is of no avail as the Tahsildar under the Inams Act is not competent to enquire into or give any decision in respect of the character of the wakf property. It is held that wakf is a permanent dedication of the property for the purpose recognized by the Muslim law as pious, religious or charitable and the property having been found as Wakf would always retain its character as a Wakf. Once a Wakf always a Wakf and the grant of patta in favour of Mokshadar under the Inams Act does not, in any manner, nullify the earlier dedication made of the property constituting the same as Wakf. After a Wakf has been created, it continues to be so far all time to come and further continues to be governed by the provisions of the Wakf Act and a grant of patta does not affect the original character of the Wakf property.

8. It is further pertinent to note that under the Act, no doubt, after abolition of Inams certain persons such as Kabiz-e-kadim, permanent tenants, protected tenants, non-protected tenants in respect of Inam lands other than the interest saved under the provisions of the Act are entitled to occupancy rights and under Section 4(1) of the Act, any Inamdar i.e. any person held as Inamdar is entitled to be registered as an occupant of all inam lands other than the lands set apart for the village community, grazing lands, mines and quarries, tanks, tank beds and irrigation works, streams and rivers, but by amended Act 19 of 1994 a proviso has been added to Section 4 according to

which where Inams are held by or for the benefit of charitable and religious institutions no person shall be entitled to be registered as an occupant under Sections 5, 6, 7 and 8 and the institution alone shall be entitled to be registered as an occupant of all Inam lands. As per second proviso any person other than the charitable or religious institution has been granted occupancy rights after the amendment of the Act came into force from 26.12.1985, such registration of ownership shall be deemed always to be null and void and no effect shall be given to such registration.

9. However, the petitioner questions the general notice issued in Form – II. The limited grievance of the petitioner is that he may be permitted to file objections pursuant to the notice issued in Form – II in Lr.No.J/577/2007 dated 04.05.2007 issued by the Revenue Divisional Officer. Pursuant to the said notice issued under Rule 6(1) of the Andhra Pradesh (Telangana Area) Abolition of Inams Rules, 1955 every person claiming interest or having interest in the lands specified in the said notice is entitled to file objections within 15 days from the date of publication of the said notice.

10. If any objections have been filed, it is for the Revenue Divisional Officer to consider and dispose the same in accordance with law. However, I do no see any merits in any of the contentions raised by the petitioner to find fault with the initiation of action by the Revenue Divisional Officer for grant of occupancy rights certificate in respect of the said land.

The writ petition is accordingly dismissed. There shall be no order as to costs.

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V. ESWARAIAH, J

October 22, 2007
DSK

[1] AIR 1998 SC 972